

Reserved on 03.07.2013

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH,
ALLAHABAD**

Original Application No. 693 of 2007

Allahabad this the, 07th day of August 2013

**Hon'ble Mr. Justice S.S. Tiwari, Sr. J.M./HOD
Hon'ble Ms. Jayati Chandra, Member (A)**

Anand Kumar Verma s/o Shri Jugal Kishor Verma, aged about 47 years, Assistant Station Master, Yamuna Bridge, r/o 60/234, Akbarpur, Khawaspura, Agra Cantt., Agra.

Applicant

By Advocate: Sri B.L. Kulendra

Versus

1. U.O.I. through General Manager, N.C. Railway, Allahabad.
2. DRM (P) C. Rly./N.C. Rly., Jhansi.
3. DRM (P) Central Railway, Sholapur.

Respondents

By Advocate: Sri Anil Dwivedi

O R D E R

By Hon'ble Mr. Justice S.S. Tiwari, Sr. J.M./H.O.D.

By the instant O.A., following relief(s) have been claimed by the applicant: -

"(1) The applicant prays this Hon'ble Tribunal may graciously be pleased to issue order or direction to respondent No. 2 to pay the arrear of difference of pay of pointsman and Pro - ASM.

(2) issue order or direction to make correct fixation of pay from 7.11.1998.



(iii) issue order or direction to give proper increment from 7.11.1999.

(iv) issue any other order or direction as this Hon'ble Tribunal may deem fit and proper in the circumstance of the case.

(v) Award the cost of the case."

2. The background of the present O.A., is as follows: -

That the applicant was appointed as a Pointsman on 22.12.1984 in Jhansi division of the Central Railway. The Chief Personnel Officer (T), Mumbai CST issued a Circular No. HPB/706/854/T/D/TR/ PRO.ASM dated 21.07.1998 to fill up 25% of the vacancies of Pro-ASM in the grade of ₹4500-7000 (RSRP) through G.D.C.E. ground in Central Railway. In pursuance of the aforesaid Circular, a selection of the Departmental Graduate candidates was held and after selection, a list of selected candidates was prepared, and the Chief Personnel Officer (T), Mumbai CST allotted divisions to the candidates who had been empanelled for the post of Pro - ASM grade ₹4500-7000 (RSRP) vide letter dated 03.08.1998. The applicant was allotted Sholapur Division in accordance with vacancies of the division and placed at serial No. 9 in the list of Sholapur Division. The parent divisions of the selected candidates were instructed to relieve the candidates to the respective allotted divisions enabling them to join the Zonal Training College, Bhusawal for Pro - ASM training.

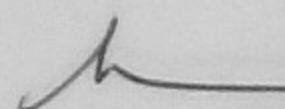


The applicant as per instructions issued by the D.R.M. (P), Jhansi was relieved by the S.M., Agra City to D.R.M. (P), Sholapur. The applicant reported to D.R.M. (P), Sholapur on 22.08.1998. The D.R.M. (P), Sholapur instead of sending him for Pro – ASM training in Course No. 137 returned the applicant to Jhansi Division without mentioning any reason. Though the applicant was a selected candidate for the post of Pro ASM but on being returned to Jhansi Division, he was again put to work on the post of Pointsman in the pay of Class – IV as earlier. Subsequently, the applicant was sent to Zonal Training College, Bhusawal by the D.R.M. (P), Jhansi after a gap of 9½ months on 17.11.1998 in the Pro-ASM course No. 139. Even after completion of the training of Pro – ASM course, the applicant was paid the wages of Pointsman and even during the training period, he was paid the same salary of Pointsman instead of being paid ₹4500/- plus usual allowances, available to a trainee of Pro – ASM course. Thus, he was put to a loss of ₹47,357/- plus other consequential allowances and seniority of two batches of Course No. 137 and 138, affecting his further increment and promotion. It is further submitted by the applicant that Mr. Krishan Kumar, ASM, Baad and Mr. Surendra Kumar Gautam have been paid arrears of Pro –

ASM training period. Ultimately, the S.M., Agra City relieved him to join as ASM, Farrah on 17.03.2001.

3. The applicant had moved several letters to the respondents to correct the anomaly and to pay him arrears of the post of Pro-ASM from the date he was sent for training but nothing has been paid. Hence, the present O.A. has been filed mainly on the grounds that the D.R.M. (P), Sholapur dishonoured the guidelines of the C.P.O. (T), Mumbai CST Circular dated 03.08.1998; he was not paid the stipend equal to initial basic pay of ASM and usual D.A. through out the training period; he was paid only the salary of Pointsman though he was selected candidate for Pro - ASM. He has been discriminated from the candidates of same cadre, post and grade.

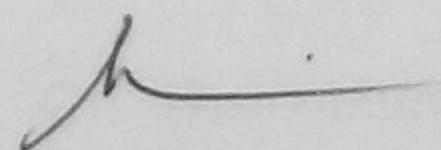
4. The respondents have contested the O.A., filed by the applicant, denied the allegations made therein mainly alleging that the name of applicant while working as Pointsman in Jhansi Division of Central Railway, was selected for the post of Pro-ASM course in the grade of ₹4500-7000/- through General Departmental Competitive Examination conducted by the C.P.O. (T), CSIM and his name was placed at serial No. 19 in the merit list. Later on, he was allotted Sholapur Division subject to the condition of passing of necessary medical examination in



Class - A II from the division. Further, the C.P.O. (T), C.S.I.M. vide his letter No. HPB/706/854/T/DTR/Pro ASM dated 03.08.1998 advised all the divisions of the Central Railway and other Units not to relieve the empanelled candidates for the post of Pro-ASM Course unless and until the respective divisions get further instructions in this behalf. The S.M., Agra City had relieved the applicant on 20.08.1998 without passing of medical examination by the applicant in Class - A II from the respective division. Accordingly, he was redirected from the Sholapur division to S.M., Agra City vide letter No. SUR/P/O PTG/ GDCE dated 24.08.1998 with instruction to complete his medical examination in Class A II and then to report to Zonal Training College, Bhusawal for the initial training of Pro - ASM. As per further directions of C.P.O. (T), CSTM vide letter No. HPB/706/854/T/DTR/Pro ASM dated 08.09.1998, it was decided that the candidates selected through General Departmental Competitive Examination (for short G.D.C.E.) for the post of Pro ASM in the grade of ₹4500-7000/- be posted on the divisions from which they have been selected. It was further clarified that if the vacancy is not available in such divisions then the selected candidates may be considered for posting in other divisions where vacancy exists. The case of applicant is

not at par with the case of Mr. Krishan Kumar and Mr. Surendra Kumar Gautam, ASMs whose names have been referred to in the O.A. by the applicant.

5. It is further contended that this O.A. is highly barred by time as the cause of action arose to the applicant in the year 2001 when he joined as ASM, whereas this O.A. has been filed in the year 2007 without any application for condonation of delay. The applicant cannot claim any arrears, as stated above, because the training of applicant was concluded on 01.04.1999, his result was declared on 12.05.1999 and on availability of vacancy he was posted as ASM on 19.02.2001. There was no intentional or deliberate delay in sending him for training or posting him as ASM. He is not entitled to get the salary and other benefits permissible to ASM before he joined the post of ASM. There is no service rule that after being selected for training of Pro ASM, an employee of the railway department should get the salary and other consequential benefits of the ASM. During the course of training he was paid the salary admissible to him for the post of Pointsman. The delay in joining the training by the applicant was mainly because without clearing the medical examination of Class A-II, he was relieved from

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Agra City to Sholapur Division. The applicant has got no case and the O.A. deserves to be dismissed.

6. The applicant has filed the Rejoinder Reply mainly reiterating the submissions and allegations made in the O.A.

7. The applicant also filed certain documentary evidence, in support of his contentions, i.e. annexure A-1 to annexure A-10.

8. On the other hand, the respondents have also placed reliance on documentary evidence, which is annexure CA-1 to annexure CA-4, on record. The documents filed by the parties will be referred to according to their relevance at the appropriate stage.

9. We have heard the learned counsel for the parties and perused the documents on record.

10. The main contention of learned counsel for the respondents is that this O.A. is highly barred by period of limitation. The cause of action arose to the applicant between the period 1998 to 2001 whereas this O.A. has been filed in the year 2001 i.e. apparently after a lapse of about six years. It is further submitted by the respondents' counsel that there is no application for condonation of this delay. On the other hand, learned



counsel for the applicant has submitted that since it is continuous cause of action, there is no need to move any application for condonation of delay. According to the applicant, fixation of pay is a recurring cause of action.

11. At the out set, it is also worth to mention that the plea of O.A., being time barred, raised by the respondents has not been properly denied and replied by the applicant even in the Rejoinder Reply. Apparently, from perusal of papers on record, it appears that this O.A. was filed on 10.07.2007 whereas the alleged cause of action arose to the applicant in the year 2001. In order to appreciate the rival contentions raised by learned counsel for the parties on this point, mention of the provisions contained under Section 21 of the Administrative Tribunals Act, 1985 is relevant, which reads as under: -

“21. Limitation – (1) A Tribunal shall not admit an application:

(a) in a case where a final order such as is mentioned in clause (a) of sub-section (2) of Section 20 has been made in connection with the grievance unless the application is made, within one year from the date on which such final order has been made;

(b) in a case where an appeal or representation such as is mentioned in clause (b) of sub-section (2) of Section 20 has been made and a period of six months had expired thereafter without such final order having been made, within one year from the date of expiry of the said period of six months.

(2) Notwithstanding anything contained in sub-section (1), where-

(a) the grievance in respect of which an application is made had arisen by reason of any order made at any time during the period of three years immediately



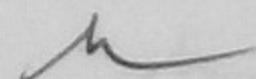
preceding the date on which the jurisdiction, powers and authority of the Tribunal becomes exercisable under this Act in respect of the matter to which such order relates; and

(b) no proceedings for the redressal of such grievance had been commenced before the said date before any High Court,

the application shall be entertained by the Tribunal if it is made within the period referred to in clause (a), or, as the case may be, clause (b), of sub-section (1) or within a period of six months from the said date, whichever period expires later.

(3) Notwithstanding anything contained in sub-section (1) or sub-section (2), an application may be admitted after the period of one year specified in clause (a) or clause (b) of sub-section (1) or, as the case may be, the period of six months specified in sub-section (2), if the applicant satisfies the Tribunal that he had sufficient cause for not making the application within such period."

A bare perusal of the aforesaid provisions shows that in such circumstances if there is no application for condonation of delay, then the O.A. is apparently time barred. When we examine the contention of learned counsel for the applicant that he was entitled for the salary and other consequential benefits, admissible to the post of ASM, since he was sent to the training of ASM or even prior to it when his name was selected for training for the post of Pro ASM, the record shows that in the circular letter issued by C.P.O. (T), Mumbai CST dated 03.08.1998 that the relieving of an employee for the post of Pro ASM training was subject to his passing medical test in Class A-II and there should be no DAR/Vig. case pending against him. It is an admitted fact that the applicant had not cleared the medical examination of Class A-II before



he was relieved from Agra City to Sholapur. The applicant could not show any such service rules that even for promotional post through selection, he was not legally required to clear the medical test of Class A-II, and when there was a specific direction of the Headquarters that before joining the training course, the employee must clear the medical test of class A-II. Similarly, the applicant on whom onus lies to prove his contention, has failed to prove by showing any service rule that just after selection of his name for the post of Pro ASM training, he has become legally entitled to the salary admissible to the post of ASM. He has also failed to prove that even during the training period and before joining the post of ASM, he was legally entitled to the salary and consequential benefits admissible to ASM. The applicant has also not been able to prove on record that after completion of the aforesaid training and despite availability of vacancy, deliberately he was not posted on the post of ASM. On the other hand, it is the contention of respondents that when the vacancy arose, he was posted on the post of ASM. Annexure A-5 is a letter sent by the applicant to D.R.M., Jhansi Division, to post him to Bhopal Division as there was no vacancy in the Jhansi Division. This letter itself shows that the vacancy was not available at Jhansi Division after the applicant completed his training for the post of ASM. The

applicant should have filed some documentary evidence on record to show that there was vacancy in the Jhansi Division or there was vacancy in Bhopal Division or at any other place where he could have been posted immediately after completion of his training. Thus, from the above discussions it is clear that the applicant himself has not been able to discharge the burden to prove his case on merits and to prove his entitlement, as alleged by him in the O.A. In other words, he could not prove that his pay fixation should have been done as alleged by him in the O.A.

12. The applicant has not filed any documentary evidence or any detail whatsoever to prove on record that his case is at par with the case of Krishan Kumar and Surendra Kumar Gautam. Mere mention of their names is not enough to allow his claim.

13. Now, we come to the point of limitation. As already mentioned above, the applicant has not filed any application for condonation of delay of about six years in filing this O.A. In the case of '*Ramesh Chand Sharma vs. Udhamp Singh Kamal and others 2000 Supreme Court Cases (L&S) 53*', the Hon'ble Apex Court has observed as follows: -

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"On a perusal of the materials on record and after hearing counsel for the parties, we are of the opinion that the explanation sought to be given before us cannot be entertained as no foundation thereof was laid before the Tribunal. It was open to first respondent to make proper application under Section 21 (3) of the Act for condonation of delay and having not done so, he cannot be permitted to take up such contention at this late stage. In our opinion, the OA filed before the Tribunal after the expiry of three years could not have been admitted and disposed of on merits in view of the statutory provision contained in Section 21 (1) of the Administrative Tribunals Act, 1985."

In the above case, the Apex Court has placed reliance on the case of "*Secy. to Govt. of India v. Shivram Mahadu Gaikwad* 1995 SCC (L&S) 1148". The Apex Court, in the above case, has observed that in absence of any application for condonation of delay cannot be considered at a belated stage. In that case, delay of three years was not condoned and the O.A. was treated as time barred. The Hon'ble Apex Court observed that on the score of limitation itself, the O.A. deserves to be dismissed.

14. Learned counsel for the applicant contended that the applicant had moved several applications to the respondents' department in this regard, and he has referred to annexures A-5, A-6, A-7 and A-8. The respondents' counsel on the other hand has submitted that the submission of applications/representations, one after the other, by the applicant to the department does



not give a cause of action to the applicant, and in this regard reliance has been placed on the case of 'C. Jacob vs. Director of Geology and Mining and another (2008) 10 Supreme Court Cases 115' in which the Hon'ble Apex Court has observed as follows: -

"Every representation to the Government for relief, may not be replied on merits. Representation relating to matters which have become stale or barred by limitation, can be rejected on that ground alone, without examining the merits of the claim. In regard to representation unrelated to the Department, the reply may be only to inform that the matter did not concern the Department or to inform the appropriate Department. Representations with incomplete particulars may be replied by seeking relevant particulars. The replies to such representations, cannot create a fresh cause of action or revive a stale or dead claim."

15. In the light of above observations, we conclude that this O.A. is highly time barred. The applicant could not show his legal entitlement for fixation of his pay from the date, alleged by him in the O.A. The O.A. is devoid of merit, and it deserves to be dismissed. Accordingly, the O.A. is hereby dismissed. No order as to costs.

J. Chandra

(Ms. Jayati Chandra)
Member - A

S.S. Tiwari
{Justice S.S. Tiwari}
Member - J